

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CIVIL REVISION APPLICATION No 82 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgment?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

GAUTAM PUNJABHAI PALKHIWALA

Versus

ANILKUMAR PUNJABHAI PALKHIWALA

Appearance:

PARTY-IN-PERSON for Petitioner Nos. 1-3
MR SK JHAVERI for Petitioner No. 1-3
MR TS NANA VATI for Respondent No. 1-2
DELETED for Respondent No. 3-3/5,7-12
Mr.Mihir Thakore, Senior Advocate, with
MS MEGHA JANI for Respondent Nos. 4-6

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/02/2004

ORAL JUDGEMENT

1. The petitioners herein are the original defendants 5 to 7 of Civil Suit No.4380 of 1982, which is pending in the City Civil Court, Ahmedabad. The parties to the litigation are brothers and the dispute in connection with the family property is pending in the City Civil Court, Ahmedabad, since more than two decades. The present petitioners herein are some of the original

defendants, against whom some of the respondents filed a suit, being Civil Suit No.1652 of 1981, which is also pending in the City Civil Court at Ahmedabad. The said suit is for partitioning the joint family property.

2. Subsequently, another suit, being Civil Suit No.4380 of 1982, is filed by some other plaintiffs, in which the present petitioners are the original defendants 5 to 7. It seems that Civil Suit No.4380 of 1982 proceeded for hearing, and, as pointed out by Mr.Mihir Thakore, learned Senior Counsel, who is appearing for some of the respondents, even evidence in the said suit had begun and some of the witnesses were examined. In that suit, an application under Section 10 of the Code of Civil Procedure was given by the present petitioners, requesting the Court that since the subject matter of both the aforesaid suits are common and decision of one suit, will govern the decision of the other suit, the suit which is instituted subsequently, i.e. Civil Suit No.4380 of 1982, is required to be stayed till Civil Suit No.1652 of 1981 is decided by the Court. The prayer of the petitioners is that the suit of 1981, which is priorly instituted, is required to be decided first and till then, the second suit is required to be stayed. The learned trial Judge, by the impugned order, has rejected the application on the ground that the subject matter and the parties to the suit are different and that the mandate of Section 10 is not applicable in the instant case. On that ground, the application was rejected.

The revision application is already admitted by this Court and interim relief is also granted. It seems that both the suits are not proceeding further.

3. At the time of hearing of this revision application, petitioner No.1-party-in-person vehemently submitted that the second suit is required to be stayed till the first suit is decided. He alternatively submitted that this being a dispute between brothers, if necessary direction is given to the trial court to decide both the suits expeditiously, within a stipulated time, he is willing to withdraw this Civil Revision Application, because, ultimately, he is interested in seeing that the old family dispute is decided one way or the other by the competent court.

4. Ms.Megha Jani, learned Advocate, who is appearing for some of the respondents, has, however, argued that this revision under Section 115 of CPC is not maintainable in view of the amendment in CPC. However, she submitted that her clients will cooperate for early

disposal of the suit. However, she has not given any express consent for expediting both the suits.

5. In my view, since the suits of 1981 and 1982 are pending before the City Civil Court, it is high time that the partition suits, wherein question about partitioning the family property is involved, are decided early and such suits are otherwise required to be decided expeditiously and it is surprising that the suits are pending before the City Civil Court since more than two decades.

Considering the request of the party-in-person to direct the trial court to decide the suits expeditiously and since the other side has also agreed to cooperate in the early disposal of the aforesaid suits, in my view, it is not necessary to decide this revision on merits, i.e. whether it will attract the limited jurisdiction of this Court in view of the amendment of CPC.

6. Considering the facts and circumstances of the case, the learned City Civil Judge, Ahmedabad, is directed to decide both the aforesaid pending suits, viz., Civil suit No. 1652 of 1981 and Civil Suit No.4380 of 1982, at the earliest and both the suits may be heard immediately and, in any case, the same may be put to an end by 30th October, 2004 without any delay, as more than 20 years have passed and yet, the suit for partition is not decided by the Court. It is, no doubt, true that, some time might have passed in view of the pendency of this revision. However, such suits should have been decided even prior to 1999. Now, in any case, this court is sure that both the suits will be disposed of by the Court within the stipulated time. Petitioner No.1-party-in-peron has submitted that all the brothers, who are parties to the suit, are above 65 years of age and they are all senior citizens. Ms.Megha Jani, learned Advocate, has also conceded that the parties to the litigation are of advanced age. That is also one of the grounds for deciding the suits immediately. But, in any case, whether the parties are young or old is irrelevant as the suit is required to be put to an end after such a long time. Ms.Jani has fairly submitted that her client will cooperate with the early disposal of the suit and will give cooperation in the fullest manner. Accordingly, the suits to be decided within the stipulated time, as indicated above.

7. The writ of this order to be sent to the City Civil Court forthwith for deciding the suit within the stipulated time. Record and Proceedings are also ordered

to be sent back immediately so as to reach the City Civil Court by 23rd February, 2004, without delay. The office is directed to see that the writ as well as R & P are sent forthwith so that the same can reach the City Civil Court by 23rd February, 2004.

8. In view of the aforesaid direction in connection with disposing of the suits within the stipulated time, Mr.G.P. Palkhiwala, petitioner No.1-party-in-petition, wants to withdraw this Civil Revision Application. He submitted that petitioners 2 and 3 are his sons and at present they are abroad, and the power-of-attorney is also produced on record.

The CRA is accordingly allowed to be withdrawn.
Rule is discharged. No costs.
16th February, 2004 (P.B. Majmudar, J.)

(apj)